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From: Grady, Mary

Sent: Mon 4/29/2013 1:54:26 PM

Subject: Water Law News for April 29, 2013



WLO.bmp Water Law News

for April 29, 2013

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Budget

Water Groups Urge Congress to Maintain Funding for Water Infrastructure Investment

A coalition of water groups called on a House Appropriations subcommittee to maintain fiscal year 2012 funding levels for a pair of water infrastructure funds rather than accept President Obama's proposed \$472 million cut to the funds....

Climate Change

Final Rule to Exempt Underground Injection Of Carbon Dioxide From RCRA Sent to OMB

The Environmental Protection Agency sent a final rule to the White House Office of Management and Budget April 24 that is expected to include an exemption from federal hazardous waste regulations for carbon dioxide captured from industrial...

Drilling

House Committee Wants More Details On Federal Fracking Research Program

Members of the House Science, Space, and Technology Committee pressed federal agency officials April 26 for more details about a coordinated federal research effort on hydraulic fracturing....

Energy

Environmental Groups Sue TVA Over Plan To Retrofit Coal-Fired Gallatin Power Plant

RALEIGH, N.C.—The Tennessee Valley Authority has violated the National Environmental Policy Act (NEPA) by failing to adequately consider alternatives to retrofitting its coal-fired Gallatin Power Plant, environmental groups...

Mining

Senate Bills Introduced to Limit Ability

Of Agencies to Regulate Mining Industry

Two Senate bills introduced April 25 would prevent the Environmental Protection Agency from retroactively vetoing mining permits and would prevent the Department of the Interior's Office of Surface Mining from rewriting the current...

Regulatory Policy

Ninth Circuit Says Consent Decree Cannot Revise Rules Outside Regulatory Procedures

A federal appeals court has told federal agencies that the government cannot use negotiations with selected litigants to avoid procedural requirements for revamping regulations (*Conservation Northwest v. Sherman*, 9th Cir., No. 11-35729,...

Water Pollution

EPA on Schedule to Report on Conditions Of Wetlands, Coastal Waters by Early 2014

The Environmental Protection Agency is on track to issue a report analyzing the condition of the nation's wetlands by late 2013 or early 2014, and a separate report assessing the condition of the coastal waters in early 2014, according...

Water Pollution

USDA Releases Web-Based Water Quality Tool

The Agriculture Department's Natural Resources Conservation Service announced April 25 that it has released a new web-based tool that will allow farmers to calculate the quality of water flowing off their lands. The Water Quality Index...

Water Resources

Action by Full Senate Tentatively Scheduled For Water Resources Development Act of 2013

The Senate leadership has scheduled floor action on the Water Resources

Development Act of 2013 (S. 601) for the week of May 6....



EPA Delays Perchlorate Health Goal To Review New Model By FDA Scientist

EPA has delayed its proposed public health goal for perchlorate in drinking water, due last February, in order to consult with a Food & Drug Administration (FDA) scientist who recently published a model very similar to what agency science advisors suggested officials use to calculate its goal and eventual regulation for the rocket fuel ingredient.

Boxer Draws Rare Criticism From Environmentalists Over NEPA Reforms

Senate environment committee Chairwoman Barbara Boxer (D-CA), one of the environmental community's staunchest allies on Capitol Hill, is facing rare criticism from activists over her support for reforms to the National Environmental Policy Act (NEPA) included in pending water resources legislation she crafted with her GOP counterpart.

Latest Blogs

EPA Issues Revised Bristol Bay Water Study

EPA has released for public comment its revised draft assessment of the potential water quality impacts of planned hard-rock mining in Alaska's Bristol Bay watershed, . . .

Bill Seeks To Block Retroactive EPA Permit Vetoes

A bipartisan group of senators has reintroduced legislation that would prohibit EPA from vetoing Clean Water Act (CWA) section 404 permits already issued by the . . .

OMB Reviews EPA Coal Ash Data

EPA has sent for White House review a notice of data availability (NODA) to seek comment on new information it received from utilities on how . . .

EPA Seeks Updates To States' Nonpoint Programs

EPA, in newly finalized guidelines for awarding Clean Water Act (CWA) grant funds to address nonpoint source (NPS) pollution, is calling for half of states . . .



BRISTOL BAY:

Large mine would hurt salmon -- EPA

Manuel Quinones, E&E reporter

Published: Friday, April 26, 2013

<http://ads.eenews.net/b/ident.gif?b=122&r=49v5f9xtew&a=51352&p=4>

A large-scale mine in southwest Alaska would have negative effects on valuable salmon populations, U.S. EPA said today when releasing its revised draft watershed assessment of potential mining in the Bristol Bay region.

Concern over the potential Pebble LP gold and copper mine prompted the agency to conduct the watershed assessment, much to the chagrin of developers and the wider mining industry.

The revised and expanded document, which contains three volumes, analyzed various mining scenarios. It says a large operation could result in the loss of more than 20 miles of stream and more than 1,000 acres of wetland, hurting salmon populations downstream.

"Indirect effects of stream and wetland losses would include reductions in the quality of downstream habitat for coho salmon, sockeye salmon, Chinook salmon, rainbow trout,

and Dolly Varden," the agency's report said.

"These indirect effects cannot be quantified but likely would diminish fish production downstream of the mine site," it added, noting that the Bristol Bay area is home to the largest sockeye salmon fishery in the world.

EPA originally released a draft watershed assessment in May 2012 (*E&ENews PM*

, May 18, 2012). Responding to public, scientific and industry concerns, the new document expands its look at potential mining scenarios and impacts and modern industry practices, and it clarifies the study's purpose.

"Generally the updated assessment affirms the conclusions of the initial assessment," Seattle-based EPA Region 10 Administrator Dennis McLerran said in a conference call this afternoon.

The new draft does not, however, take into account the prospect of a smaller underground mine. "We have evaluated what we believe would be likely scenarios for mining development," McLerran said.

Environmentalists applauded the EPA document.

"The science is clear," said Tim Bristol, Alaska chief for Trout Unlimited, the mine's main opposition group. "Developing Pebble Mine will harm salmon and destroy streams even if nothing ever goes wrong at the mine."

Also today, more than 300 scientists in coordination with the Pew Charitable Trusts sent a letter to the White House praising the watershed assessment and warning about the mine's possible impacts.

"The watershed assessment is particularly important for protecting a region in which a healthy and diverse fish population is central to the wellbeing of people, other wildlife, the economy and a subsistence way of life that dates back thousands of years," they said in their letter.

"The agency is to be commended for initiating this effort rather than waiting to rely on the narrow scope of review that might be taken when a single permit application is filed," the scientists wrote.

Pebble backers, however, have been calling on the agency to let the permitting process work its course. They fear that EPA will use the watershed assessment to block key permits for the mine.

The Pebble venture is a partnership between Vancouver, British Columbia-based Northern Dynasty Minerals Ltd. and London-based Anglo American PLC. Northern said the partners may be ready to submit the project for official review this year.

As planned, EPA will submit the new draft assessment for another round of public comment and scientific peer review (*Greenwire*, April 24). Acting Administrator Bob Perciasepe said earlier this week that the process could be complete by fall.

"We believe that the information that is in our assessment will be useful in any permitting or evaluation process that may move forward," McLerran said.

The document itself stressed, "This assessment is a scientific investigation. It does not reflect any conclusions or judgments about the need for or scope of government action, nor does it offer or analyze options for future decisions."

[Click here for a summary of the new draft watershed assessment.](#)

HYDRAULIC FRACTURING:

GOP blasts White House request to boost fracking study funds

Nick Juliano, E&E reporter

Published: Friday, April 26, 2013

House Republicans today criticized an Obama administration request for additional money to fund an ongoing study into the health, safety and environmental consequences of hydraulic fracturing.

Lawmakers argued that the interagency probe was a precursor to aggressive federal regulation of oil and gas drilling and charged that the agencies were not sharing enough information about their activities.

Rep. Cynthia Lummis (R-Wyo.) questioned the request for tens of millions in additional funding for the study next year, pointing to the "terrible track record" of U.S. EPA related to its withdrawn conclusion tying groundwater contamination in Pavillion, Wyo., to fracking. She also complained that EPA, the Department of Energy, the U.S. Geological Survey and other agencies failed to release a draft of the interagency study by last fall or finalize it by the beginning of this year, as initially scheduled.

"Congress and the public have very few details regarding the administration's ongoing

activities in this area," Lummis said at a hearing this morning. She said lawmakers wanted to ensure that "the administration's research activities are appropriate, balanced and transparent."

Lummis chairs the House Science, Space and Technology Subcommittee on Energy, which convened today's joint hearing along with the Environment Subcommittee. Officials from EPA, USGS, DOE and the Department of Health and Human Services testified.

Rep. Chris Stewart (R-Utah), who chairs the Environment Subcommittee, accused the administration of taking a "cart before the horse" approach to the study in looking for an excuse to regulate hydraulic fracturing. Instead, he urged the administration to embrace the benefits natural gas has delivered, pointing to a 12 percent reduction in greenhouse gas emissions between 2005 and 2011.

"Rather than search for problems that do not exist, the EPA and this administration should recognize that fracking is the solution, not a problem," Stewart said.

The administration witnesses all agreed that new domestic supplies of oil and natural gas unlocked with recent advances combining hydraulic fracturing, which is also referred to as fracking, and horizontal drilling have been a boon for the economy and aided efforts to address climate change. But they stressed that much remains unknown about the controversial production technique, which has been used in Eastern states like Pennsylvania only for a few years. They said the study was aimed at establishing best practices to ensure hydraulic fracturing could continue with support from the public.

"This is a period of great opportunity for the prudent development of our country's oil and gas resources, which could make a positive contribution to our economy, jobs and balance of trade. But to get these benefits, we must do this right," said Guido DeHoratiis, DOE's acting deputy assistant secretary for oil and gas.

The administration's fiscal 2014 budget requests a total of \$44.7 million for the fracturing research, including \$12 million for DOE, DeHoratiis said. EPA is seeking \$14.1 million for its unconventional oil and gas research, said Kevin Teichman, a senior science adviser in the Office of Research and Development. And USGS is seeking \$18.6 million, said David Russ, USGS's Northeast regional director.

In the current fiscal year, EPA is spending about \$6.1 million, DOE is spending about \$10 million and USGS is spending about \$8.6 million, the witnesses said.

Agencies are focusing on their own areas of expertise within the study, witnesses said. For example, USGS is studying the link between fracturing and earthquakes, while EPA is studying potential water contamination and methane emissions generated by the technique.

Republicans on the committee also slammed EPA's refusal to send the agency's lead representative to the hydraulic fracturing study, senior policy counsel Bob Sussman,

despite receiving four weeks' notice of the hearing.

"While I hope the agency had a good reason for their refusal to make Mr. Sussman available, they did not share this reason with us," Stewart said, noting that Sussman's absence emphasizes Republicans' existing concerns about EPA's lack of transparency.

COAL:

Ind. lawmaker introduces bill to block stream rule

Manuel Quinones, E&E reporter

Published: Friday, April 26, 2013

Sen. Dan Coats (R-Ind.) introduced legislation yesterday meant to prevent the federal Office of Surface Mining from promulgating its forthcoming stream protection rule.

The proposal, which has been years in the making, is meant to protect waterways from the impacts of coal strip mining. But many pro-coal lawmakers and mining companies say it would kill jobs; they prefer the existing guidelines promulgated under President George W. Bush.

"After five years of environmental analysis, a sensible rule was put in place that strikes the right balance between protecting streams and producing an important energy resource," said Coats. "Changing this rule will cost the jobs of hardworking Americans in Indiana and other states and weaken an already fragile economy."

Coats' legislation, S. 831, mirrors a measure he introduced last year (*E&E Daily*, July 7, 2012). It would bar OSM from issuing any new rule that would block strip mining in certain areas or hurt coal production and mine employment.

Joining Coats in introducing the bill is a group of GOP lawmakers including Wyoming Sen. John Barrasso and Louisiana Sen. David Vitter, ranking member of the Environment and Public Works Committee.

The proposal faces strong opposition from pro-environment Democrats in the Senate. But Rep. Bill Johnson (R-Ohio) shepherded a companion measure through the GOP-

controlled House last year.

In response to questions from the House Natural Resources panel, OSM Director Joseph Pizarchik recently said the agency would likely publish the stream protection rule next year (*Greenwire*, April 4).

He wrote in a letter, "The Stream Protection Rule remains under development, as does its associated Draft Environmental Impact Statement and Regulatory Impact Analysis."

OFFSHORE DRILLING:

Judge orders Transocean to comply with federal subpoenas

Jeremy P. Jacobs, E&E reporter

Published: Friday, April 26, 2013

A federal judge yesterday ordered Transocean Ltd. to turn over documents relating to the Deepwater Horizon oil spill to federal investigators.

Houston-based U.S. District Judge Lee Rosenthal ruled that Transocean must comply with subpoenas issued by the U.S Chemical Safety Board relating to the April 2010 spill in the Gulf of Mexico.

The judge gave Transocean 30 days to hand over the documents.

The Chemical Safety Board, or CSB, is conducting the last remaining federal investigation into the spill. It issued five subpoenas to Transocean for a series of documents.

Transocean had challenged CSB's authority and jurisdiction to issue subpoenas. Further, the company argued that it had already provided relevant documents to other federal agencies for alternative investigations. Witnesses from other companies have also refused to testify and cooperate with the CSB investigation.

Consequently, Transocean asked the district to dismiss the subpoenas, but the Justice Department came to CSB's defense.

The CSB investigation is focused primarily on the explosion on the oil rig, not the ensuing oil spill.

Rosenthal also ruled that Transocean must pay the government's legal costs during the subpoena lawsuit.

The semi-independent agency has received some recent criticism for the laggard pace of its investigations. Last July, CSB released initial findings, concluding that a focus on individual worker safety -- instead of a broader look at safety systems -- contributed to the disaster (*EnergyWire*, July 25, 2012).

It is unclear when CSB will fully complete its investigation.

[Click here for the ruling.](#)

URANIUM:

Colo. reissues key permit for controversial mill

Manuel Quinones, E&E reporter

Published: Friday, April 26, 2013

<http://ads.eenews.net/b/ident.gif?b=105&r=8tb8w44dym&a=51352&p=2>

Colorado regulators have granted Toronto-based Energy Fuels Inc. a new license to build the country's first conventional uranium mill in three decades.

Yesterday, the Colorado Department of Public Health and Environment's radiation program said the company had met all the requirements for a radioactive materials license and, therefore, the state was under legal obligation to issue one.

Last year, Denver District Judge John McMullen scrapped the project's previous license, accusing state regulators of not allowing for enough public comment. Department chief Chris Urbina is defending its reissuance.

"From the beginning, we have listened carefully to the public and worked with Energy

Fuels to minimize risks to public health and the environment," he said, touting "strict environmental regulations" that "far exceed those in place when the last such mill was constructed more than 25 years ago."

Environmental and community advocates have been trying for years to stop the 500-ton-per-day mill planned for Montrose County in Colorado's Paradox Valley. Not only are they worried about pollution from the facility but also the encouragement of more uranium mining throughout the region (Greenwire, Jan. 15).

"We are extremely disappointed that the state opted to ignore the scientific and technical evidence against the mill," opposition group Sheep Mountain Alliance said in a statement. "And further we are shocked that the state, through this decision, is strongly encouraging Energy Fuels to build a radioactive waste dump on the Dolores River."

As critics mull an appeal, regulators say they have enhanced planned groundwater monitoring and will have at least one staff member monitoring the proposed mill. They also point to a settlement with Telluride and San Miguel County providing for dust and radioactive materials protection.

"With the approval of the license, our work is not done," Urbina said. "We will continue to work with the community members and officials to keep them informed of progress."

ClimateWire -- Mon., April 29, 2013 -- Read the full edition

1. BUSINESS: Consortium sells power from electric cars to grid and turns profit

If not for the orange power cords trailing from their sides, the 15 Mini Coopers lined up in the northwest corner of the University of Delaware's science and technology campus might have been a scene from a BMW dealership. No other outward clues hinted that in their stationary form, these cars were driving a new business.

2. HEALTH: Achoo! Pollen level counts on steady rise, but is climate change to blame?

If the fine yellow powder lining Washington, D.C.'s sidewalks and benches weren't enough of an indication, local allergy sufferers have recently noticed high levels of tree pollen dusting America's capital, via watery eyes, runny noses and itchy throats. Scientists have predicted that rising temperatures linked to climate change are likely to intensify the allergy season, and this month's spike may have been a preview of what's

to come.

TODAY'S STORIES

3. SCIENCE: As temperatures rise, forests emit more seeds for clouds that cool

4. WEATHER: Balmy week triggers rapid snowmelt that floods Red River Valley

5. REGULATION: Green guidelines for palm oil growers rankle environmentalists

6. WEATHER: After objections to drought report, NOAA issues clarifying 'FAQ'

7. OCEANS: Northeast sea surface temperatures spiked to record highs in 2012 -- report

8. AUTOS: Electric car maker offers no-fault battery warranty for its luxury sedan

9. FINANCE: Investors set sights on green energy in Europe

10. EMISSIONS: Greenhouse gas contribution of industrialized countries fell 0.7 percent in 2011

11. NATIONS: Ireland says it is likely to miss 2020 greenhouse gas targets

12. CULTURE: Climate change novel published by U.K. science museum

E&ETV's OnPoint

13. ENERGY POLICY: Refiners' Drevna says RFS should be scrapped

EnergyWire TODAY'S EDITION: Monday, April 29, 2013 -- 08:08 AM Read full edition

1. CLIMATE:

Marcellus Shale cities, entwined with gas, are among latest to join fossil fuels divestment push

From where State College, Pa., sits -- in the crook of the Marcellus Shale's elbow -- it's impossible to avoid the economic ripples of natural gas drilling. But that hasn't stopped the town's mayor from coming out against fossil fuels. Last week, Mayor Elizabeth Goreham joined mayors and city councils from nine other cities to call for fossil fuel divestment: withdrawing, or withholding, any public investment in the top 200 companies that produce coal, oil or natural gas. [Go to story #1](#)

THIS MORNING'S STORIES

2. WORKFORCE: OSHA conducting safety sweeps at Bakken well sites

3. OIL FIELD SERVICES: Overseas investments pay off for providers amid domestic drilling slowdown

4. MARCELLUS SHALE: Some residents near drilling attribute health problems to fracking -- pilot study

5. NEW YORK: Conflict-of-interest charges fan flames over fracking study

6. OFFSHORE DRILLING: Anadarko sees stars aligning in Gulf's ultra-deep waters

7. ARCTIC DRILLING: Shell's 'beer can' spill backup successfully tested

8. NORTH DAKOTA: Will gas flaring measures be enough to stanch waste?

9. LNG: Global gas demand buoys Ohio equipment builder

10. BUSINESS: Tiny explorer's oil discoveries attract big would-be buyers

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